

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BOARD OF TRUSTEES OF THE U.A. LOCAL) Case No. 08-2122 SC
NO. 355 HEALTH AND WELFARE TRUST)
FUND; BOARD OF TRUSTEES OF THE U.A.)
LOCAL NOS. 343 AND 355 DEFINED) DEFAULT JUDGMENT
CONTRIBUTION PLAN; BOARD OF)
TRUSTEES OF THE NORTHERN)
CALIFORNIA/NORTHERN NEVADA UTILITY)
JOURNEYMAN AND APPRENTICE TRAINING)
TRUST FUND; BOARD OF TRUSTEES OF)
THE U.A. LOCAL NO. 355 LABOR-)
MANAGEMENT COOPERATION COMMITTEE)
TRUST FUND; AND U.A. LOCAL NO. 355,)

Plaintiffs,)

v.)

IMAGE LANDSCAPE, INC., a California)
corporation,)

Defendant.)

I. INTRODUCTION

The present matter comes before the Court on the Motion for Default Judgment ("Motion") filed by the plaintiffs Board of Trustees of the U.A. Local No. 355 Health and Welfare Trust Fund et al. ("Plaintiffs"). Docket No. 13. Pursuant to Federal Rule of Civil Procedure 55(a), the Clerk of the Court entered default against the defendant Image Landscape, Inc. ("Image" or "Defendant"). Docket No. 12. For the following reasons, it is hereby ORDERED, ADJUDGED and DECREED that:

JUDGMENT shall be entered in favor of Plaintiffs Board of Trustees of the U.A. Local No. 355 Health and Welfare Trust Fund et al., and against Defendant Image Landscape, Inc.

II. BACKGROUND

In April 2008, Plaintiffs filed a suit under sections 1132 and 1145 of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 et seq., and under section 301 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185. The suit was brought in response to Defendant's alleged failure to make the required payments to joint labor-management trust funds and employee benefit plans, in violation of a collective bargaining agreement and certain trust agreements. Although Plaintiffs served Defendant, Defendant failed to respond or otherwise defend the action.

According to the First Amended Complaint ("FAC"), the collective bargaining agreement provided that the trust funds were permitted to audit and review all records relevant to the enforcement of the provisions of the various agreements. See FAC, Docket No. 7, ¶¶ 7-12. On July 17, 2007, an audit of Defendant's records for the period between January 1, 2004, through August 31, 2006, was completed. Id. ¶ 13. The audit ultimately concluded that benefit contributions of \$115,059.91, liquidated damages of \$11,7505.99, and interest in the amount of \$27,969.86 had not been submitted to the trust funds in violation of the underlying agreements. In addition, pursuant to the trust agreement, because Plaintiffs have filed a lawsuit in their efforts to enforce the

1 agreed-upon contributions, the liquidated damages, normally
2 calculated at 10% of the contributions, were doubled and
3 calculated at 20% of the contributions. See Nord Decl., Docket
4 No. 15, Ex. A, U.A. Local No. 355 Health and Welfare Trust Fund
5 Trust Agreement ("Trust Agreement") § 3.06. Finally, pursuant to
6 the Trust Agreement and the relevant statutes, the employer is
7 responsible for the cost of the audit and reasonable attorneys'
8 fees. See id. § 4.4.04; 29 U.S.C. § 1132(g)(2). The cost of the
9 audit in the present action was \$20,944.00. See Hallenbeck Supp.
10 Decl., Docket No. 21, ¶ 2.

11 12 **III. DISCUSSION**

13 **A. Legal Standard**

14 After entry of default, the Court may enter a default
15 judgment. Fed. R. Civ. P. 55(b). "However, entry of default does
16 not automatically entitle the non-defaulting party to entry of a
17 default judgment regardless of the fact that the effect of entry
18 of a default is to deem allegations admitted." In re Villegas,
19 132 B.R. 742, 746 (9th Cir. BAP 1991). Rather, "the decision to
20 enter a default judgment is discretionary." Alan Neuman Prods.,
21 Inc. v. Albright, 862 F.2d 1388, 1392 (9th Cir. 1988). First, the
22 Court must "assess the adequacy of service of process on the party
23 against whom default is requested." Bd. of Trs. of the N. Cal.
24 Sheet Metal Workers v. Peters, No. C-00-0395 VRW, 2000 U.S. Dist.
25 LEXIS 19065, at *2 (N.D. Cal. Jan. 2, 2001). Once the Court
26 determines that service was sufficient, it may consider the
27 following factors when exercising its discretion to enter a
28

default judgment:

(1) the possibility of prejudice to the plaintiff, (2) the merits of plaintiff's substantive claim, (3) the sufficiency of the complaint, (4) the sum of money at stake in the action, (5) the possibility of a dispute concerning material facts, (6) whether the default was due to excusable neglect, and (7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits.

Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986).

B. Analysis

"The general rule of law is that upon default the factual allegations of the complaint, except those relating to the amount of damages, will be taken as true." Geddes v. United Fin. Group, 559 F.2d 557, 560 (9th Cir. 1977). For the following reasons, the Eitel factors favor default judgment.

1. Service of Process

Service of process against Defendant was adequate. Federal Rule of Civil Procedure 4(h) provides the standards for service upon corporations, associations, or partnerships. Copies of the summons and complaint were served not only through the mail but also were hand-delivered to an agent at Defendant's principal place of business, 4800 Amber Lane, Sacramento, California, 95841. See Docket Nos. 5, 6.

2. Prejudice

Accepting the allegations in the FAC as true, Plaintiffs would be prejudiced absent entry of default judgment. Defendant has failed and refused to make required payments into joint labor-management trust funds and employee benefit plans, in violation of

1 a collective bargaining agreement and various trust agreements.
2 This failure, if not remedied, will prejudice Plaintiffs.

3 3. Merits of Plaintiffs' Substantive Claims and
4 Sufficiency of Complaint

5 This factor also favors entry of default judgment.
6 Plaintiffs have sufficiently pleaded claims under ERISA and the
7 LMRA arising from Defendant's failure to make the required
8 payments to the joint labor-management trust funds and the
9 employee benefit plans.

10 4. Amount of Money at Stake

11 The sum of money at stake weighs in favor of default
12 judgment. Plaintiffs only seek the delinquent contributions owed
13 by Defendant to the various plans, as calculated through an audit
14 that had been previously agreed upon by both parties.

15 5. Possibility of a Dispute Concerning Material Facts

16 Upon entry of default, all well-pleaded facts in the
17 Complaint are taken as true. Geddes, 559 F.2d at 560. After
18 review of the FAC, the possibility of a dispute concerning
19 material facts appears small. This factor weighs in favor of
20 default judgment.

21 6. Whether Default Was Due to Excusable Neglect

22 As noted above, Defendant was properly served. Although the
23 Defendant did not make an appearance or participate in any manner
24 in this action, the Court finds that the possibility that default
25 resulted from the excusable neglect of Defendant is remote. This
26 factor therefore weighs in favor of default judgment.

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1 Council for Clean Air, 478 U.S. 568, 564-65 (1986).

2 In assessing a reasonable hourly rate, courts should consider
3 the prevailing market rate in the community for similar services
4 by lawyers of reasonably comparable skill, experience, and
5 reputation. Blum v. Stenson, 465 U.S. 886, 895 (1984); Cancio v.
6 Fin. Credit Network, No. 04-3755, 2005 WL 1629809, at *1 (N.D.
7 Cal. July 6, 2005). Courts within this district have used
8 different methods and reached different results. Compare Yahoo!,
9 Inc. v. Net Games, Inc., 329 F. Supp. 2d 1179, 1192 (N.D. Cal.
10 2004) (employing complex formula to determine that the average
11 hourly rate in the San Francisco area around 2002 was \$190 per
12 hour), with Cancio, 2005 WL 1629809 at *3 (finding that precedent
13 in the Northern District of California supported hourly rates in
14 2005 of \$345 per hour and \$435 per hour).

15 Determination of a reasonable hourly rate also depends on the
16 skill, experience and reputation of the attorney as well as the
17 complexity of the litigation. Counsel, in her declaration, notes
18 that she was admitted to practice in 1979 and has handled cases
19 involving fringe benefit contributions since April 1980. Nord
20 Decl. ¶ 8. In light of the facts and the relevant caselaw from
21 this district, the Court concludes that Plaintiffs' counsel's
22 hourly rates are reasonable.

23 The second lodestar factor is the reasonable number of hours
24 counsel spent prosecuting the case. If the requested number of
25 hours is greater than the number of hours reasonably competent
26 counsel would have billed, then the court should reduce the
27 requested number of hours accordingly. Hensley v. Eckerhart, 461

1 U.S. 424, 434 (1983). In the present case, counsel spent
2 approximately 21 hours prosecuting the case. Nord Decl. ¶ 9. The
3 Court finds that such an amount is reasonable in prosecuting a
4 default judgment case.

5 For these reasons, the Court AWARDS attorneys' fees of
6 \$5,209.50 and filing and delivery costs of \$477.80.

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8 **IV. CONCLUSION**

9 For the foregoing reasons, it is ORDERED, ADJUDGED, and
10 DECREED that:

11 JUDGMENT shall be entered in favor of Plaintiffs Board of
12 Trustees of the U.A. Local No. 355 Health and Welfare Trust Fund
13 et al., and against Defendant Image Landscape, Inc. Plaintiffs
14 are AWARDED the following:

- 15 1. \$115,059.91 in unpaid benefits plus, pursuant to 29
16 U.S.C. § 1132(g), interest of 12% on the unpaid benefits
17 beginning from the date of this Order until paid;
- 18 2. \$27,969.86 in interest that has so far accumulated;
- 19 3. \$23,011.98 in liquidated damages;
- 20 4. \$5,209.50 in attorneys' fees; and
- 21 5. \$477.80 in costs.

22
23 IT IS SO ORDERED, ADJUDGED, and DECREED.

24
25 Dated: October 21, 2008

26 

27 UNITED STATES DISTRICT JUDGE